



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

FEB - 7 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7016 2070 0001 1397 3522

Mr. William Ashley, Owner
Cha-Liz Farms, LLC
1032 Ashley Road
West Chazy, NY 12992

Re: **Administrative Docket No. CWA-02-2017-3034**
Cha-Liz Farms, LLC
SPDES Permit No. NYA000316
Clean Water Act Information Request and Administrative Compliance Order

Dear Mr. Ashley:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that Cha-Liz Farms, LLC ("Respondent") is in violation of the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*) ("CWA" or "Act") for its failure to comply with the terms and conditions of the State Pollutant Discharge Elimination System ("SPDES") General Permit for Concentrated Animal Feeding Operations ("CAFOs") General Permit No. GP-04-02 ("CAFO General Permit" or "Permit"). Enclosed is an Information Request and Administrative Compliance Order (together the "Order"), Docket No. CWA-02-2017-3034, issued pursuant to Sections 308 and 309 of the CWA, which details the findings.

Please acknowledge receipt of this Order by signing the acknowledgment page and returning the acknowledgment page by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the Respondent to civil/criminal penalties pursuant to Section 309 of the CWA and subject the Respondent to ineligibility for participation in work associated with Federal contracts, grants or loans.

Also enclosed is the Inspection Report for the inspection of the Facility conducted by the EPA on October 20, 2016. If you have any questions regarding the enclosed Order, please contact Ms. Justine Modigliani, P.E., Chief, Compliance Section, at (212) 637-4268.

Sincerely,

Kathleen Anderson, Acting Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, P.E, Director, Bureau of Water Compliance Programs, NYSDEC
Carol Lamb Lafay, Regional Water Engineer, NYSDEC Region 5
Darren Usinowicz, Agricultural Consulting Services (dusinowicz@acs.office.com)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Cha-Liz Farms, LLC
1032 Ashley Road
West Chazy, New York 12992

RESPONDENT

Proceeding pursuant to Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

**INFORMATION REQUEST AND
ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2017-3034

A. STATUTORY AUTHORITY

The following Information Request and Administrative Compliance Order (together the "Order") are issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued by the NYSDEC to facilities for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. The Administrator of EPA has promulgated 40 C.F.R. § 122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations. 40 C.F.R. § 122.23 establishes requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.

4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association or municipality.
5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and further defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate "wetlands;" all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
9. "Owner or operator" is defined by 40 C.F.R. § 122.2 as the owner or operator of any facility or activity subject to regulation under CWA Section 402.
10. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
11. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is, *inter alia*, a large CAFO or medium CAFO.
12. A "large CAFO" is defined by 40 C.F.R. § 122.23(b)(6) as, *inter alia*, an animal feeding operation that stables or confines 700 or more mature dairy cows, whether milked or dry, and which, as relevant here, discharges pollutants into waters of the United States through a man-made ditch, flushing system, or other similar man-made device.
13. "Process wastewater" is defined by 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust

control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

14. "Production area" is defined by 40 C.F.R. § 122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.
15. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objectives of the CWA.
16. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance with the CWA when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for, among other things, violating any condition or limitation contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director makes the following findings of fact and conclusions of law:

1. Cha-Liz Farms, LLC ("Respondent"), owns and operates Cha Liz Farms located at 1032 Ashley Road, West Chazy, NY ("Facility") and Respondent is an owner or operator within the meaning of 40 C.F.R. § 122.2.
2. Respondent is a corporation, and is therefore a "person," as that term is defined in Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).
3. According to the New York Department of State, the service address for Cha-Liz Farms, LLC is 1032 Ashley Road, West Chazy, NY 12992, which is also the mailing address for the Facility.
4. The Facility confines and feeds or maintains mature dairy cows for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post-harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
5. The Facility confines approximately 980 mature dairy cows, 700 heifers and calves, and 120 young stock on-site. Therefore, the Facility is operating as a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4)(i).
6. The Facility discharges stormwater to Little Chazy River, a navigable water of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
7. On June 18, 1999, the NYSDEC issued SPDES General Permit for CAFOs No. GP-99-01, with an effective date of July 1, 1999, and an expiration date of June 30, 2004.

8. On June 24, 2004, the NYSDEC issued SPDES General Permit for CAFOs No. GP-04-02, with an effective date of July 1, 2004 and an expiration date of June 30, 2009 ("CAFO General Permit" or "Permit"). GP-04-02 has been administratively extended.
9. On December 26, 1999, Respondent applied for coverage as a medium CAFO and received coverage under the CAFO General Permit with the authorization No. NYA000316 on January 4, 2000. On March 15, 2006, Respondent submitted a Notice of Intent to expand from a medium CAFO to a large CAFO under GP-04-02. The NYSDEC granted permit coverage as a large CAFO on May 6, 2006. Respondent has been covered as a Large CAFO under the conditions and limitations in the permit at all relevant times addressed by the Order.
10. On October 20, 2016, the EPA conducted an inspection of Respondent's Facility.
11. Based on the inspection findings, the EPA finds that Respondent has failed to comply with the CWA and the conditions and limitations of the CAFO General Permit, including but not limited to the following:
 - a. Section IX.F of the CAFO General Permit requires the permittee to retain copies of all records and reports required by this permit for a period of at least 5 years from the date reported. The following records were not maintained or retained as required:
 - i. Section IX.O.i (Production Areas) specifies that all large CAFOs must inspect water lines, including drinking water or cooling water lines, once per day, and document those inspections. At the time of the inspection, records documenting daily water line inspections were not being maintained, in violation of Sections IX.F and IX.O.i (Production Areas) of the Permit.
 - ii. Section IX.O.ii (Production Areas) of the Permit requires weekly records of the depth marker reading for manure and process wastewater in any open liquid storage structures. At the time of the inspection, the Respondent provided copies of inspection records over the previous five years. However, review of the records indicated that the following:
 1. Inspections were not conducted between January 1 and April 1, 2016, and again between April 5 and June 24, 2016.
 2. Inspections were not conducted for a few weeks between January 1, 2014 and April 18, 2014.
 3. Inspections were not conducted for specific weeks in 2012 (e.g. weeks 11, 15, 22, 35, and 38).
 4. Inspection records do not provide a comprehensive overview of the depth marker for each of the individual storages (4 total). Instead, records of depth inspections were inclusive and not site specific.Therefore, Respondent is in violation of in violation of Sections IX.F and IX.O.ii (Production Areas) of the Permit.
 - iii. Section IX.O.ii (Land Application Areas) specifies that all large CAFOs must keep records documenting date(s) of manure application equipment inspection. At the time of the inspection, there were no records documenting dates of manure application equipment inspection or calibration, in violation of Sections IX.F and IX.O.ii (Land Application Areas) of the Permit.

- b. Section VIII.C.xi of the Permit requires that “[c]ollection, storage, and disposal of liquid and solid waste should be managed in accordance with NRCS standards.” Specifically, NRCS Conservation Practice Standard No. 312 “Waste Management System” states that “waste” includes polluted runoff such as that from a barnyard or silo, and that all farms with silage will address silage leachate control.” In addition, NRCS Conservation Practice Standard No. 635 “Vegetated Treatment Area” (VTA) specifies general criteria applicable to all vegetative treatment areas as well as additional criteria for treatment of bunk silo leachate. Section X.G of the CAFO General Permit requires the permittee to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with this permit. At the time of the inspection, the EPA observed that the operation and maintenance requirements for the VTA were not being implemented as the VTA had not been mowed for two years, the level lip spreaders were not maintained as they could not be found in the field, and significant erosion was observed at the base of the collection system, in violation of Sections VIII.C.xi and X.G of the Permit.
- c. Section IX.M of the Permit requires all large CAFOs to analyze manure at least once annually for nitrogen and phosphorus content. At the time of the inspection, the EPA observed the following:
- i. The Main Pit (Waste Storage Facility #1 and Waste Storage Facility #2) and the Small Pit (Concrete Manure Storage) had last been sampled on October 9, 2012.
 - ii. The Old Pit (Heifer Waste Storage Facility) had last been sampled on October 6, 2011.
- Therefore, Respondent is in violation of Section IX.M of the Permit.
- d. Section IX.O.v (Production Areas) of the Permit requires all large CAFOs to keep records of the design of the manure and litter storage structures which includes records of volume of solids accumulation, approximate number of days worth of storage capacity, design treatment volume, total design volume and calculations used to determine the total design volume for storage structures. At the time of the inspection, Respondent did not have copies of the required records for the Main Pit (Waste Storage Facility #1 and Waste Storage Facility #2). Therefore, Respondent is in violation of Section IX.O.v (Production Areas) of the Permit.
12. Based upon Paragraphs 1-11 above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations in the CAFO General Permit.

C. REQUESTED INFORMATION

Based on the Findings of Fact and Conclusions of Law, above, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit the following to EPA, with a copy to NYSDEC:

1. A written response detailing how each of the listed Areas of Concern in the enclosed Inspection Report were addressed within **forty-five (45) calendar days** of receipt of this Order.

2. Written monthly progress reports summarizing the measures taken to comply with Ordered Provisions D.2.a – D.2.g until full compliance with the Order and Permit are achieved. Such reports shall include photographs documenting measures implemented and costs associated with each Item. Monthly progress reports are **due January 30, 2017, February 28, 2017, March 31, 2017, and April 30, 2017**. If full compliance is not achieved by April 30, 2017, subsequent reports will be due on the last day of each month, until full compliance is achieved.

D. ORDERED PROVISIONS

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Immediately upon receipt of this Order, a responsible official of the Respondent shall complete and sign the acknowledgment of receipt and return the acknowledgment page to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed in paragraph E.1, below.
2. Respondent shall complete the following items in accordance with the schedule listed below:

Item	Completion Deadline
a. Document and maintain records of daily water line inspections, in accordance with Section IX.O.i (Production Area) of the CAFO General Permit.	Begin implementation immediately upon receipt of this Order.
b. Conduct weekly depth marker readings at each of the manure storages in use, in accordance with Section IX.O.ii (Production Areas) of the CAFO General Permit.	Begin implementation immediately upon receipt of this Order.
c. Document and maintain records of weekly depth marker readings on an individual basis for each of the four manure storage structures in use at the Facility, in accordance with Section IX.O.ii (Production Areas) of the CAFO General Permit.	Begin implementation immediately upon receipt of this Order.
d. Conduct and maintain records of manure application equipment inspection, in accordance with Section IX.O.ii (Land Application Areas) of the CAFO General Permit.	Begin implementation immediately upon receipt of this Order.
e. Maintain copies of the records of the design of Waste Storage Facility #1 and Waste Storage Facility #2, in accordance with Section IX.O.v (Production Areas) of the Permit.	Begin implementation immediately upon receipt of this Order.
f. Conduct manure analysis for nitrogen and phosphorus for all four storages in use (Waste Storage Facility #1, Waste Storage Facility #2, Concrete Manure Storage, and Heifer Waste Storage Facility), in accordance with Section IX.M of the Permit.	Begin implementation immediately upon receipt of this Order, and annually thereafter.
g. Properly operate and maintain systems of treatment and control in accordance with the Permit and NRCS Standards for the VTA, including but not limited to: <ol style="list-style-type: none"> i. Mowing the VTA; 	Begin implementation immediately upon receipt of this Order, but no later than April 30, 2017.

ii. Maintaining the level lip spreaders; and, iii. Maintaining the high flow / low flow collection system.	
h. Submit the report requested in paragraph C.1, above.	Within forty-five (45) calendar days of receipt of this Order.
i. Submit the Monthly Progress Reports requested in paragraph C.2, above.	If full compliance is not achieved by April 30, 2017, subsequent reports will be due on the last day of each month, until full compliance is achieved.

E. GENERAL PROVISIONS

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Doughlas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, New York 10007-1866

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water, NYSDEC
625 Broadway
Albany, New York 12233-3506

2. Pursuant to 40 C.F.R. § 122.22, all information or documents required to be submitted by Respondent shall be signed by an authorized representative of Respondent, and shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. Respondent shall have the opportunity, for a period of twenty (20) days from the date of receipt of this Order, to confer regarding the Requested Information or Ordered Provisions, with the following designated Agency representative:

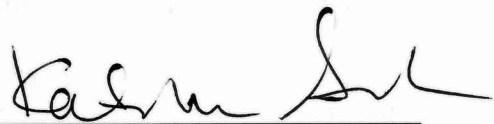
Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, New York 10007-1866
(212) 637-4244

4. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. Section 706 of the APA provides the grounds for such review.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an action taken by the EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties for each violation of up to \$37,500.00 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R., Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for hearing, the Court determines that you have violated the CWA as described above.
7. Notice is hereby given that failure to comply with the requirements of the CWA Section 308 Information Request may result in your liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that you have failed to comply with the terms of the Information Request. You may also be subject to administrative remedies for a failure to comply with the Information Request as provided by Section 309 of the CWA.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

FEB - 7 2017

Dated: _____

Signed: _____


Kathleen Anderson, Acting Director
Division of Enforcement
& Compliance Assistance

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Cha-Liz Farms, LLC
1032 Ashley Road
West Chazy, New York 12992

RESPONDENT

Proceeding pursuant to Sections 308(a) and 309(a) of
the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

INFORMATION REQUEST AND
ADMINISTRATIVE
COMPLIANCE ORDER

CWA-02-2017-3034

ACKNOWLEDGMENT OF RECEIPT OF
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER

I, _____, an authorized representative of the Respondent, with
the title of, _____, do hereby acknowledge the receipt of the
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER,
CWA-02-2017-3034.

DATE: _____

SIGNED: _____